

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AD20

**Endangered and Threatened Wildlife and Plants; Proposed Special Rule for the Conservation of the Northern Spotted Owl on Non-Federal Lands**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Special Rule.

**SUMMARY:** The implementing regulations for threatened wildlife generally incorporate the prohibitions of Section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. At the time the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special section 4(d) rule and, therefore, all of the section 9 prohibitions, including the "take" prohibitions, became applicable to the species. Subsequent to the listing of the spotted owl, a Federal Late-Successional and Old-growth (LSOG) forest management strategy (Plan) was developed and then formally adopted on April 13, 1994, in a Record of Decision (ROD) that amended land management plans for Federal forests in northern California, Oregon, and Washington. Although this proposed rule refers to the Federal LSOG forest strategy as the "Forest Plan", it is noted that the strategy is not a stand-alone management Plan but rather effected a series of amendments to Forest Service and the Bureau of Land Management planning documents. In recognition of the significant contribution the Plan does make toward spotted owl conservation and management, the Service now proposes a special rule, pursuant to section 4(d) of the Act, to replace the blanket prohibition against incidental take of spotted owls with a narrower, more tailor-made set of standards that reduce prohibitions applicable to timber harvest and related activities on specified non-Federal forest lands in Washington and California.

**DATES:** Comments from all interested parties must be received by May 18, 1995.

The Service seeks comments from the interested public, agencies, and interest groups on this proposed special rule

and the potential environmental effects of its implementation. A Draft Environmental Impact Statement (DEIS) is being developed to accompany this proposed rule and will be published soon after the proposed rule. The end of the comment period on this proposed rule will be extended to coincide with the end of the public comment period on the DEIS.

**ADDRESSES:** Comments and materials concerning this proposed rule should be sent to Mr. Michael J. Spear, Regional Director, Region 1, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181. The complete file for this proposed rule will be available for public inspection, by appointment during normal business hours, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curt Smith, Assistant Regional Director, North Pacific Coast Ecosystem, 3704 Griffin Lane SE, Suite 102, Olympia, Washington 98501 (206/534-9330); or Mr. Gerry Jackson, Deputy Assistant Regional Director, North Pacific Coast Ecosystem, 911 N.E. 11th Avenue, Portland Oregon 97232-4181, (503/231-6159).

**SUPPLEMENTARY INFORMATION:****Abstract**

The implementing regulations for threatened wildlife generally incorporate the prohibitions of section 9 of the Endangered Species Act (Act) of 1973, as amended, for endangered wildlife, except when a "special rule" promulgated pursuant to Section 4(d) of the Act has been issued with respect to a particular threatened species. When the northern spotted owl, *Strix occidentalis caurina*, (spotted owl) was listed as a threatened species in 1990, the Fish and Wildlife Service (Service) did not promulgate a special 4(d) rule. Therefore, all of the Section 9 prohibitions for endangered species were made applicable to the spotted owl throughout its range, including the prohibitions against "take" that apply to endangered species under the Act.

Subsequent to the listing of the spotted owl, a new Federal forest management strategy was developed and proposed by the Forest Ecosystem Management Assessment Team (FEMAT), which was established by President Clinton following the April 2, 1993, Forest Conference in Portland, Oregon. FEMAT was established to develop options for the management of Federal LSOG-forest ecosystems in northern California, Oregon, and Washington within the range of the spotted owl. FEMAT outlined those options in the report, *Forest Ecosystem*

*Management: An Ecological, Economic, and Social Assessment*, which drew heavily upon previous scientific studies conducted on the northern spotted owl. On July 1, 1993, the President identified "Option 9" in the FEMAT Report as the preferred alternative for managing Federal LSOG-forests in northern California, Oregon, and Washington. The proposed management scenario under Option 9 of FEMAT established a system of late-successional forest and riparian reserves that would, in conjunction with Administratively withdrawn and Congressionally reserved areas, provide the foundation of protected "old growth" habitat that would benefit spotted owls, marbled murrelets, salmon and many other old growth associated species; adaptive management areas (AMAs) and surrounding "matrix" lands would constitute the remaining forest management designations on Federal lands in the planning area. Future timber harvesting activities on Federal lands within the range of the northern spotted owl were expected to occur primarily in AMAs and Federal lands determined to constitute the "matrix."

A draft Supplemental Environmental Impact Statement was issued in July 1993 to assess the environmental impacts of the alternatives which were set forth in the FEMAT Report. A final SEIS was completed in February 1994, and a Record of Decision was signed on April 13, 1994. This process culminated in the formal administrative adoption of Alternative 9 (a revised version of Option 9 as it had been presented in the FEMAT Report), which has now become known, simply, as the Forest Plan or Plan. This Plan provides a firm foundation for the conservation needs of the spotted owl, especially in light of the net addition of approximately 600,000 acres of Federal forest lands to protected reserve status between its original formulation in the FEMAT Report and the Record of Decision. On December 21, 1994, Federal District Court Judge William L. Dwyer, issued his order upholding the adequacy of the Plan. Judge Dwyer said "The order now entered, \* \* \*, will mark the first time in several years that the owl-habitat forests will be managed by the responsible agencies under a plan found lawful by the courts. It will also mark the first time that the Forest Service and BLM have worked together to preserve ecosystems common to their jurisdictions."

Despite enhanced owl protection under the final Forest Plan, however, the Service believes that some supplemental support from non-Federal forest lands remains necessary and

advisable for owl conservation in certain parts of the range of the owl.

Based upon the possibility that the preferred alternative of FEMAT (Option 9) would eventually be adopted, the Service published a Notice of Intent (NOI) in the **Federal Register** (58 FR 69132) on December 29, 1993, and sent out a mailer advising the public of its intention to prepare an Environmental Impact Statement (EIS) for a proposed special rule that would ease restrictions for the spotted owl on certain non-Federal forest lands. In response, the Service received and evaluated more than 8,500 public comments. Taking these comments into consideration, and based upon additional analyses, the Service now proposes a special rule that would reduce the prohibition against incidental take of spotted owls in the course of timber harvest and related activities on specified non-Federal forest lands in Washington and California.

For reasons discussed in more detail later, the Service is not including Oregon, at this time, within the geographic scope of this proposed special rule. The Service is aware of ongoing efforts within Oregon between the Governor's office and large and small landowners to fashion an "Oregon Alternative" to the Service's proposed action for the State, as set out in the December 29, 1993, NOI. The Service is supportive of this effort and will maintain the regulatory status quo for spotted owls in Oregon in anticipation that an "Oregon Alternative" approach to owl conservation will be developed. Thus, by excluding Oregon altogether from this proposed special rule, the Service retains for Oregon the original level of protection against take for the owl established when the species was listed on June 26, 1990.

In assessing the conservation needs of the northern spotted owl on non-Federal lands, the Service was particularly mindful of—(1) The level of protection to be provided the owl under the Federal reserve and riparian buffer systems established under the Forest Plan, as well as the matrix and adaptive management area prescriptions under the Plan; (2) the range, location, and number of spotted owls on non-Federal and Federal lands; (3) recently developed State programs to regulate forest practices to benefit the spotted owl; and (4) emerging non-Federal landowner habitat management and owl conservation strategies such as Habitat Conservation Plans and agreements to avoid the incidental take of owls.

This special rule proposes to replace the currently applicable blanket prohibition against incidental take on

non-Federal lands throughout the owls' range with a more particularized set of prohibitions for Washington and California. For the State of Washington, incidental take restrictions would be relaxed for approximately 5.24 million acres of non-Federal land in conifer forests. While only a considerably smaller acreage figure of non-Federal forest land is presently affected by incidental take prohibitions for the spotted owl, the fear of future owl restrictions is a significant concern of forest landowners throughout the range of the spotted owl. This proposed rule would ease incidental take restrictions on designated non-Federal lands by limiting the incidental take prohibition for timber harvest activities to actions that fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. By proposing this action, the Service is not implying that incidental take cannot occur until harvest activities approach and actually invade an owl's activity center. Rather, the Service is proposing that, in certain portions of the owl's range, the incidental take of an owl will no longer be a prohibited activity unless it involves harvest activities within an activity center.

Current incidental take restrictions would be retained for those spotted owls whose site centers are located within six designated zones or "Special Emphasis Areas" (SEAs) in the State of Washington. The six SEAs include the western portion of the Olympic Peninsula, the Finney Block area, the I-90 Corridor, the Mineral Block area, the Siouxeon Creek area and the Columbia Gorge/White Salmon areas. These areas were generally chosen to fill in gaps in protection under the Forest Plan where the Federal land base alone appears currently to be inadequate to provide for the conservation of the owl.

In addition, the Service proposes to implement a "Local Option Conservation Planning" program in Washington to provide an opportunity for additional relief from incidental take prohibitions for non-Federal landowners who own between 80 and 5,000 acres of forest lands within an SEA. The Local Option process is envisioned to be the equivalent of a "short form" Habitat Conservation Plan. The local option conservation planning process would not apply to those areas where the Service determines that suitable owl habitat (nesting, roosting or foraging habitat) on non-Federal lands within SEAs can reasonably be expected to provide important demographic support for Federal owl reserves. These "Local Option" conservation plans would provide non-Federal landowners

with the flexibility to develop alternative prescriptions or restrictions for their lands which could achieve a level of protection comparable to the conservation objectives set forth for the owl in this rule.

For the State of California, this proposed rule would recognize the significant conservation benefits accorded the northern spotted owl under California law by easing the Federal prohibition against incidental take from timber harvest activities in most of the Klamath province of that State. The zone in which this would occur would be called the Klamath Province Relief Area. The incidental take prohibition for timber harvests in this Relief Area would be limited to actions which fail to maintain the 70 acres of suitable owl habitat closest to a site center for a spotted owl. Additional relief could be provided to non-Federal landowners in four potential "California Conservation Planning Areas" (CCPAs) referred to as the California Coastal Area, Hardwood Region, Wells Mountain-Bully Choop area, and the California Cascades pursuant to the planning process under the California Natural Communities Conservation Planning (NCCP) Act or through completion of a Habitat Conservation Plan (HCP) under Section 10(a)(1)(B) of the Act (Figure 1 to § 17.41(c)).

Except for acreage actually located within owl activity centers, the Service also proposes that small landowners who own no more than 80 acres of forest lands within a given SEA in Washington or one of the four potential CCPAs in California, as of the publication date of this proposed rule in the **Federal Register**, would be relieved of the general prohibition against incidental take. The only exception to this proposal would be for any small landowner who owns any or all of the 70 acres of forested lands closest to an owl site center. The incidental take restriction would continue to apply within such 70 acres.

The Service also proposes to provide landowners within SEAs in Washington or potential CCPAs in California additional flexibility for avoiding incidental take liability if their lands are intermingled with Federal matrix or Adaptive Management Area (AMA) lands. In such situations, non-Federal landowners would be provided the alternative option at their choosing of adopting the final harvest prescriptions delineated for the surrounding Federal matrix or AMA lands, in lieu of management practices which comply with current incidental take restrictions. The one exception to this policy would

be where the adoption of final matrix or AMA harvest prescriptions could result in the incidental take of an owl whose site center is located within a Forest Plan reserve or Congressionally reserved or Administratively withdrawn areas. In such a case, the incidental take restrictions would continue to apply for at least two more years, pending review of the status of owls in affected reserve or withdrawn areas.

For Tribal forest lands in Washington and California, the Service proposes to lift the Federal prohibition against the incidental take of the spotted owl except for harvest activities within the immediate 70 acres around a site center. Timber harvests conducted in accordance with Tribal resource regulations would not be subjected to any additional Federal prohibitions against incidental take of the owl.

Additionally, the Service proposes to include a "sunset" provision that would lift the incidental take restrictions within an SEA or CCPA once the owl conservation goals for that area are achieved. The Service also proposes to provide a "safe harbor" of certainty for harvest activities within SEAs or CCPAs where more than 40 percent suitable owl habitat would be retained after harvest within an owl's median annual home range. In those instances where the "safe harbor" provision would apply, landowners would not be subject to a take prohibition violation under any circumstances should an incidental take of an owl nevertheless occur despite the landowner's efforts to avoid take. The "safe harbor" provision would not apply, however, to any timber harvest activities within the closest 70 acres of suitable owl habitat surrounding an owl site center regardless of the percentage of suitable owl habitat left within an owl's median annual home range.

In addition, the proposal sets out a new approach to provide incentives to non-Federal landowners to restore or enhance degraded spotted owl habitat, or to maintain existing suitable owl habitat, without being penalized if their conservation efforts subsequently attract spotted owls.

### Definitions

As used in this proposed rule:

"Activity center" means the closest 70 acres of suitable habitat around the nest tree of a pair of owls or around the primary roost of a non-nesting pair or territorial single owl (see "site center").

"Adaptive management area" means the ten landscape units that were adopted in the April 13, 1994, Record of Decision for development and testing of technical and social approaches to

achieving specific ecological, economic, and other social objectives.

"Administratively withdrawn area" means lands that are excluded from planned or programmed timber harvest under current agency planning documents or the preferred alternative for draft agency planning documents.

"California Conservation Planning Area (CCPA)" means areas in which the State of California Resources Agency could conduct planning for spotted owls under the auspices of the California Natural Communities Conservation Planning Act (CNCCPA) of 1991.

"Congressionally reserved area" means those lands with Congressional designations that preclude timber harvest, as well as other Federal lands not administered by the Forest Service or Bureau of Land Management, including National Parks and Monuments, Wild and Scenic Rivers, National Wildlife Refuges, and military reservations.

"Conservation" as defined in the Endangered Species Act generally means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.

"Demographic support" refers to the effects on a population from a combination of births and deaths such that the net result is a stable or increasing population. For the spotted owl this would occur through provision and maintenance of: (1) Both suitable and dispersal habitat to support individual owls; (2) small clusters or larger groups of successfully breeding owls; and (3) the successful interaction and movement between individuals and pairs.

"Dispersal" refers to movements through all habitat types by: (1) juvenile spotted owls from the time they leave their natal area until they establish their own territory; (2) non-territorial single spotted owls; or (3) displaced adults searching for new territories.

"Dispersal habitat" means forest stands with adequate tree size, structure, and canopy closure to provide—(1) cover for dispersing owls from avian predators; and (2) foraging opportunities during dispersal events.

"Federal reserve" or "Forest Plan reserve" means those Federal lands delineated in the April 13, 1994, Record of Decision in which programmed timber harvest is not allowed and is otherwise severely limited. There are two types of reserves—late-successional reserves, which are designed to produce contiguous blocks of older forest stands, and riparian reserves, which consist of

protected strips along the banks of rivers, streams, lakes, and wetlands which act as a buffer between these water bodies and areas where timber harvesting is allowed.

"Habitat Conservation Plan" (HCP) means an agreement between the U.S. Fish and Wildlife Service and either a private entity, local or county government or State under section 10(a)(1)(B) of the Act that specifies conservation measures that would be implemented in exchange for a permit that would allow the incidental take of a listed species.

"Home range" means the area a spotted owl uses and traverses in the course of normal activities in fulfilling its biological needs during the course of its life span.

"Incidental Take" means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

"Matrix" means those Federal lands generally available for programmed timber harvest which are outside of the Congressionally reserved and Administratively withdrawn areas, Federal reserves and adaptive management areas as delineated in the Standards and Guidelines adopted in the April 13, 1994, Record of Decision.

"Province" or "Physiographic Province" means one of twelve geographic areas throughout the range of the northern spotted owl which have similar sets of biological and physical characteristics and processes due to effects of climate and geology which result in common patterns of soils and broad-scale vegetative communities.

"Record of Decision" means the April 13, 1994, *Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl* (USDA/USDI 1994).

"Site Center" means the actual nest tree of a pair of spotted owls or the primary roost of a non-nesting pair or territorial single owl.

"Special Emphasis Area (SEA)" means one of six specific areas in the State of Washington where the Service has determined that it would be necessary and advisable to continue to apply broad protection from incidental take to support conservation efforts for the spotted owl.

"Suitable Habitat" means those areas with the vegetative structure and composition that generally have been found to support successful nesting, roosting, and foraging activities of a territorial single or breeding pair of spotted owls. Suitable habitat is

sometimes referred to as nesting, roosting, and foraging (NRF) habitat.

"Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct with respect to a spotted owl.

"Threatened Species" means a plant or wildlife species defined through the Endangered Species Act that is likely to become within the foreseeable future an endangered species throughout all or a significant portion of its range.

"Timber harvest and related activity" means any activity that would result in the removal or degradation of suitable habitat.

## Background

### *Regulatory History of the Northern Spotted Owl*

The Service listed the northern spotted owl as a threatened species on June 26, 1990, because of the past and continued projected loss of suitable habitat throughout its range (55 FR 26114). This habitat loss has been caused primarily by timber harvesting, but has been exacerbated by the effects of catastrophic events such as fire, volcanic eruption, and wind storms.

The inadequacy of regulatory mechanisms existing in 1990 under State and Federal law also contributed to the decision to list the northern spotted owl as a threatened species. During the period immediately prior to listing, when the status of the owl was under review, the annual Federal timber harvest in Oregon and Washington averaged approximately 5 billion board feet per year. Much of that harvest comprised suitable spotted owl habitat. Thus, Federal timber harvest policies at that time contributed significantly to the decline of the owl.

State protection for the owl in 1990 was also inadequate. Since that time, California, Oregon and Washington have all recognized the plight of the owl and have adopted forest management rules designed to protect this threatened species. The degree of protection accorded the northern spotted owl currently varies under State law. The northern spotted owl is listed under Washington law as an endangered species, under Oregon law as threatened, and under California law as a sensitive species.

On January 15, 1992, the Service designated critical habitat for the northern spotted owl (57 FR 1796). The critical habitat designation encompassed 6.9 million acres of Federal land in 190 critical habitat units in the States of California, Oregon, and Washington; non-Federal lands were not

included in the critical habitat designation. Of the total acreage that was designated, 20 percent is in California, 47 percent is in Oregon, and 32 percent is in Washington.

Following the April 2, 1993, Forest Conference in Portland, Oregon, President Clinton established a Forest Ecosystem Management Assessment Team (FEMAT) to develop options for the management of Federal LSOG-forest ecosystems to provide habitat that would support stable populations of species associated with late-successional forests, including the northern spotted owl. FEMAT developed ten options for the management of LSOG-forest ecosystems on Federal lands in California, Oregon, and Washington, which are outlined in the Team's report, "Forest Ecosystem Management: An Ecological, Economic, and Social Assessment" (USDA et al. 1993). On July 1, 1993, the President identified Option 9 as the preferred alternative for amending the Federal agencies' land management plans with respect to LSOG forest habitat. A modified version of Option 9 was adopted in the April 13, 1994, Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl (ROD). It is based on a system of late-successional reserves, riparian reserves, adaptive management areas, and a matrix of Federal lands interspersed with non-Federal lands. These designations complemented existing Administratively withdrawn and Congressionally reserved lands.

The adoption of the Forest Plan was subsequently upheld in Federal court. On December 21, 1994, Federal District Court Judge William L. Dwyer rejected plaintiffs' challenges and issued an order upholding the President's Forest Plan.

An underlying premise for the President's selection of the Forest Plan was that Federal lands should carry a disproportionately heavier burden for providing for the conservation of the northern spotted owl, enabling an easing of restrictions on incidental take for the owl on large areas of non-Federal lands. President Clinton thus directed the U.S. Fish and Wildlife Service to issue regulations pursuant to section 4(d) of the Act looking to ease, where appropriate, restrictions on the incidental take of spotted owls on non-Federal lands.

On December 29, 1993, the Service published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement in support of a 4(d) rule for the spotted owl

(58 FR 69132). The NOI spelled out various alternative approaches for a 4(d) rule, including a preferred approach or proposed action. This provided a preliminary opportunity for public input prior to the actual publication of this proposed rule.

### *Summary of Public Comments on Scoping Notice on 4(d) Rule*

The Service received more than 8,500 comments from the public on its scoping notice for a section 4(d) rule EIS for the spotted owl. Most comments received were in response to a January 3, 1994, special mailer sent by the Service to approximately 80,000 recipients. The Service specifically asked for suggestions on issues to be addressed in the 4(d) rule. In general, the comments reinforced issues and concerns identified in previous planning efforts for the spotted owl.

In the scoping notice, the Service sought comments on ten specific issues. The comments received are summarized below, by issue:

(1) Biological, commercial, trade, or other relevant data on the distribution and abundance of the northern spotted owl on non-Federal lands in California, Washington and Oregon.

No new data or information was provided to the Service relative to this issue.

(2) Biological, commercial, trade or other relevant data on the distribution and abundance of the northern spotted owl that identifies the effects of the alternatives for a section 4(d) rule on the northern spotted owl.

No new data or information was provided to the Service relative to this issue.

(3) The scope of the issues that have been identified for the environmental impact statement on a proposed special rule.

In addition to the issues identified in the scoping notice, commenters identified several additional issues for the Service to consider. Several commenters objected to any provision requiring that 40 percent of suitable habitat be retained within the median annual home range circle of an owl located within SEAs, and, because it means that 60 percent of suitable habitat within a home range may be lost, requested an explanation of the biological basis for such a provision. They also requested that the Service consider how habitat modification on non-Federal land will affect owls on adjacent Federal lands.

Comments from non-Federal landowners requested that the Service consider the possible economic benefits of a variety of silvicultural regulations

to protect owl habitat. They also asked that the Service evaluate whether the SEA concept fully takes into account the contributions already provided by State agencies and those already in place on Federal lands, and whether the regulatory burden of the SEAs is disproportionate to the benefits.

(4) The range of alternatives that have been identified for the environmental impact statement on a proposed special rule.

A number of commenters provided suggestions for additional alternatives for Service consideration. These included requests to increase or relieve the prohibitions against incidental take, to consider the development of a program based entirely on voluntary participation by forest land managers, to not use SEAs and use only 70 acre owl circles rangewide, and to provide incidental take protection only to landowners who sell to domestic markets. Some commenters requested that the Service provide an alternative with incentives for growing habitat, or to buy or exchange land instead of promulgating a section 4(d) rule. Another suggestion was to transplant spotted owls rather than use a special rule to provide for connectivity, and depend on Federal lands to provide the land base for connectivity.

Other suggested alternatives included using existing exceptions to prohibitions, such as the HCP process, in combination with a final recovery plan for the owl; protecting previously proposed critical habitat on private lands in addition to, or instead of, the SEAs; and applying the 50–11–40 rule to SEAs in addition to, or instead of, retaining 40 percent of suitable habitat within a home range.

Modifications of the alternatives were also suggested. Some examples include replacing the SEAs in Washington with the areas proposed to the Washington Forest Practices Board in a report by the Spotted Owl Scientific Advisory Group (SAG report), to add an SEA for southwestern Washington, and to reduce or exclude the Olympic Peninsula SEA.

Comments specific to California alternatives included requests to provide a separate 4(d) rule for California; to apply the Washington/Oregon approach with SEAs to California; to repeal existing owl rules and designate specific “no take” areas; and to maintain existing prohibitions of take and adopt the California Board of Forestry’s new late-successional forest rules.

(5) Input on how suitable habitat for the marbled murrelet should be identified and how it should be

protected, and data on marbled murrelet distribution and abundance on non-Federal lands.

Numerous comments were received on the marbled murrelet, with most stating that it is inappropriate to include the murrelet in the regulatory process for the spotted owl because not enough information about murrelets is available at this time to attempt a regulatory definition of incidental take, and that any rule for the murrelet should be done separately. One commenter stated that the Service should consider adopting an interim 4(d) rule for marbled murrelets that can be refined at a later date because they are associated with the same forest ecosystem as the spotted owl, and that all suitable murrelet habitat should be addressed including marine habitat. Another suggested that, in identifying marbled murrelet habitat, the emphasis should be on a definition that recognizes large contiguous areas of habitat capable of supporting large numbers of birds, and not on defining the lowest possible quantity and stand size used.

(6) Input on the use of “local options” to allow individuals to propose adjustment to prohibitions against take of northern spotted owls without going through the normal habitat conservation planning process.

The potential use of the local option plan was responded to favorably by many commenters. Most said that a “local option” plan should be included as an additional tool to protect owls and to provide landowner flexibility, and that these should provide the same legal protection as HCPs. Others stated that the rule should provide flexibility for applying local options based on the expertise and knowledge of State forestry associations, State governments, and forest landowners.

(7) Consideration of a small landowner exemption for non-commercial forest land of ten acres or less.

Many commenters addressed this issue with the majority recommending that the Service carefully examine and explain the rationale and biological basis for such an exemption, and suggesting that any provision to have less restrictive measures for small landowners would unfairly shift the burden of responsibility to the larger landowners. Others suggested that such an exemption may tend to break large ownerships into smaller ownerships. Some expressed the view that while appealing, it may set up an arbitrary distinction between landowners based on size, and that the 10 acre size specified in the scoping notice was too small to be meaningful.

(8) Boundaries of the SEAs in the proposed action, including the impacts and effects of alternative boundaries.

Few suggestions were received relative to specific boundary changes. Many comments were received regarding the number of SEAs, the designation or lack of designation of specific SEAs, and the general use of the SEA concept. Among the comments specific to the boundaries was the suggestion that the Mineral Block and I–90 Corridor SEAs should extend no farther west than necessary to provide reasonable connectivity between the Federal conservation areas to the north and south.

Regarding the Olympic Peninsula SEA, comments included the assertion that there should be no SEA on the Olympic Peninsula because Federal lands should be relied on for owl conservation in this area. Another suggestion was that the Service move the southern boundary of the proposed Olympic Peninsula SEA northward to run east and west from the southern boundary of the Olympia National Forest. It was further suggested that only the State of Washington’s Olympic Experimental Forest be included in the SEA for the Olympic Peninsula, and that this SEA be rescinded following the approval of an HCP for the State Forest.

Many commenters were specifically concerned about the failure to designate the White Salmon landscape as an SEA to provide demographic interchange between owls on the Yakima Indian Reservation and Federal lands in the eastern Washington Cascades. Other commenters noted that there is no demonstrated need for an SEA in the White Salmon or Hood River areas.

Many commenters asked that the Service provide the scientific basis for determining the configurations and boundaries of the SEAs. There were further suggestions that for SEA boundaries, the rule must specify the requirements of “owl shadows” (restrictions on adjacent lands near an owl site center) both within and outside of SEA’s. Some commenters stated that the Service should eliminate all SEAs as they would provide further harvest restrictions which would be unduly burdensome, and that they go beyond the Act by mandating conservation measures on privately owned land.

(9) Possible mitigation measures, such as multi-species Habitat Conservation Plans or conservation agreements that provide long-term enforceable and protective land management prescriptions for non-Federal lands.

Several commenters referenced the use of the HCP process, requesting that the Service clarify the relationship